IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

W.P. No.10401 of 2002

N.Kumara Perumal ... Petitioner

-vs-

1. The Inspector General,
Central Industrial Security Force,
CISF South West Sector,
RCFL Complex,
Chembur,
Mumbai 400 074.

2. The Deputy Inspector General,
CISF, Southern Zone,
D Block, Rajaji Bhavan,
Besant Nagar,
Chennai 600 090.

3. The Commandant,
CISF Unit,
Neyveli Lignite Corporation,
Neyveli.

4. The Assistant Commandant,
CISF Unit, NLC,
Neyveli. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari as stated therein.

For Petitioner : Mr.T.N.Sugesh

For Respondents : Mr.M.Dhamodaran, CGSC

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O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

The prayer in the writ petition is for a writ of certiorari to call for the records relating to the impugned order of the second respondent in Order No.V-11015/20/2001/L&R (SZ)/4960 dated 16.06.2001 and the order of the third respondent in order No.V-15013/CISF/NLC/Appeal/2000-8217 dated 19.10.2000 and the order of the fourth respondent in order No.V-15014/CISF/NLC/AC/N.K.P/2000/85 dated 23.06.2000 and quash the same.

2. According to the petitioner, at the time of filing of the writ petition, he was working as a Constable, CISF Unit, Chennai Port Trust. While he was working in CISF Unit, Neyveli Lignite Corporation, the Assistant Commandant, NLC had issued a charge memorandum in proceedings dated 22.05.2000 containing a charge that he was allegedly ordered to appear before the Inspector/CIW in connection with an enquiry and was issued with a letter dated 17.04.2000, which he had allegedly refused to receive and it amounts to gross indiscipline, severe misconduct and unbecoming of a member of the Force. The petitioner submitted his reply to the said memorandum on 31.05.2000 denying the charges framed against him. He explained that the letter was not handed over to him through the proper channel, viz., through the Company Commander who had to relieve him. He also cited an incident which took place on an earlier occasion. In the reply, he had also sought for an oral enquiry in order to prove that he had not committed any misconduct as alleged. However, no enquiry was held and immediately after the receipt of his explanation, the fourth respondent had issued the final order dated 23.06.2000 rejecting his explanation and imposed a punishment of "fine equivalent to one day pay".

3. Against the said order dated 23.06.2000 passed by the disciplinary authority, the petitioner submitted an appeal to the Commandant, CISF Unit, NLC (the third respondent herein) on 01.07.2000. However, the third respondent rejected his appeal on 19.10.2000. Thereafter, he submitted a revision petition to the Deputy Inspector General, CISF, Southern Zone (the second respondent herein) on 12.01.2001. While considering the revision, the second respondent issued a show cause notice dated 03.05.2001 calling upon him to show cause within a period of ten days as to why the punishment of "pay fine equivalent to one day pay" should not be enhanced to that of "withholding of one increment for a period of one year". The petitioner submitted his representation on 08.06.2001. However, the second respondent passed an order on

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16.06.200, enhancing the punishment as proposed in the show cause notice. Aggrieved by the same, having no other remedy, the petitioner has filed the present writ petition before this Court.

4. Heard the learned counsel for the petitioner as well as the learned Central Government Standing Counsel for the respondents.

5. Learned counsel appearing for the petitioner submitted that though in the explanation the petitioner had sought for an enquiry to be conducted, the same was not afforded and imposition of punishment without holding any enquiry is in violation of the principles of natural justice. He further contended that all the authorities failed to consider the explanation dated 31.05.2000, wherein the petitioner has highlighted the reason for his non compliance and also cited earlier similar incidents. According to the learned counsel for the petitioner, none of these aspects was considered by all the three authorities. In any event, according to the counsel, the revisional authority is not justified in enhancing the punishment to that of ""withholding of one increment for a period of one year".

6. On the other hand, learned Central Government Standing Counsel for the respondents submitted that considering the charge levelled against the petitioner and after perusing the explanation, the original authority passed an order and inasmuch as the revisional authority, after finding that the punishment imposed is too lenient and after affording opportunity had enhanced the same, there is no valid ground for interference.

7. We have perused the materials and carefully considered the rival contentions. The charge framed against the petitioner is as follows:

> "No.882296478 Constable N.K.Perumal of Hqrs Coy., CISF Unit NLC, Neyveli was ordered to appear before the Inspector/CIW in connection with an enquiry and issued a letter. But he refused to receive the letter dated 17.04.2000. This act on the part of said Constable is gross indiscipline severe misconduct and unbecoming of member of an Armed Force."

8. It is useful to refer the explanation offered by the petitioner. Among the various details furnished, the following reasons in the explanation are relevant.

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"Sir, On 18.04.2000 while I was on duty, Shri Ameer HC/GD came to me and shown me a letter calling me to report to Inspector/CIW for official purpose, the letter was marked to me through company commander. But the company commandor's signature was not in that letter. Hence, I have requested Mr.Ameer, HC to give the letter to company commander, who will in turn relieve me from duty, so as to enable me to report to Inspector/CIW for official purpose. But that letter was not handed over to company commandor, and not served to me through proper channel. Therefore, I have not refused to receive the letter, in turn, I have requested the HC to serve the letter to me through proper channel.

Further, I submit you sir, prior to this letter, on 05.04.2000, I was issued with a letter directed me to report before Inspector/CIW by 10.30 hrs on 07.04.2000. This letter was served to me without the notice of the company commander. I have not been relieved by the company commander to report to the Inspector/CIW on the said date and time, even though I have informed him about this and requested him to relieve me to report at the Inspector/CIW. Hence at the second instance on the letter, without the notice of the company commander came to me, I have informed the HC Shri Ameer to give the letter to company commander to serve me through proper channel. Hence, my intention is not to refuse to receive the letter, but the fact has to be known to my higher officer to relieve me from duty to attend before the Inspector for official duty which is said to me an enquiry according to the Memo cited.

Therefore, I submit you Sir, I have not refused to receive the letter as alleged in the memo cited and I have neither committed any misconduct, nor misbehaved with indiscipline. I request you Sir, an oral enquiry may kindly be arranged for this purpose so as to enable me to prove that I have not committed any misconduct as alleged. When, Shri Ameer, HC came to me and shown the letter dt.17.04.2000, some of my Executives viz., SI/Exe. Shri KRM Rao, and BHM HC/GD, R.D.Singh were present in the scene. They know everything about what I have told to Mr.Ameer with regard to the letter."

9. A perusal of the above explanation shows that when one Ameer, HC came to him and showed a letter calling him to report to the Inspector/CIW for official purpose, the petitioner found that the Company Commander's signature was not in that letter. Accordingly, he requested Mr.Ameer, HC to hand over the letter to

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his Company Commander, who will, in turn, relieve him from duty so as to enable him to report to the Inspector/CIW for official purpose. It further shows that the said letter was not handed over to the Company Commander and not served to him through the proper channel. Because of the same, he refused to receive the letter and requested Mr.Ameer, HC to serve the letter through the proper channel. In the same explanation, he referred to one earlier instance which shows that on 05.04.2000, he was issued with a letter to report before the Inspector/CIW by 10.30 hrs on 07.04.2000. The said letter was served to him without the notice of the Company Commander. He was not relieved by the Company Commander to report to the Inspector, even though he informed the same and requested him to relieve him to report to the Inspector/CIW.

10. In view of the said incident, we are of the view that the petitioner is fully justified in asking Mr.Ameer, HC to serve the said letter through his Company Commander, to avoid further action against him. A perusal of the order of the original authority does not reflect proper consideration of the said explanation and the original authority had not bestowed attention to the petitioner's explanation for not receiving the letter. Further, in the same explanation, after asserting that he neither committed any misconduct nor misbehaved with indiscipline, he requested an oral enquiry to be conducted to enable him to prove that he had not committed any misconduct as alleged. Admittedly, for the reasons best known to the original authority, no oral enquiry was conducted. On going through the reasons stated in the explanation and in view of the fact that though a specific request was made for an oral enquiry it was not considered, we are of the view that even the order passed by the original authority awarding the punishment of ""pay fine equivalent to one day pay" cannot be sustained. Unfortunately, this vital aspect has not been considered by the appellate and the revisional authorities. Instead, the revisional authority, after stating that the punishment imposed by the original authority is too lenient, issued a show cause notice to enhance the quantum of punishment from "one day pay fine" to "withholding of one increment for a period of one year". Though the order dated 16.06.2001 of the revisional authority shows that the petitioner had not submitted any representation, according to the petitioner, he submitted his representation on 08.06.2001. The said explanation is available at page Nos.15 to 17 of the typed set of papers filed by the petitioner. A perusal of the said explanation, particularly the last page shows that there is an endorsement to show that the said explanation was received by a person concerned in the office of the revisional authority. No doubt, learned counsel for the respondents disputes the same, irrespective of the conclusion of the revisional authority.

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11. In view of our discussion that even the original punishment namely ""pay fine equivalent to one day pay" is not justified and warranted, it is unnecessary to go into the correctness of the order passed by the revisional authority. Under these circumstances, the impugned orders of the respondents are set aside. Accordingly, the writ petition is allowed. No costs.

gms

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Inspector General,
Central Industrial Security Force,
CISF South West Sector,
RCFL Complex,
Chembur,
Mumbai 400 074.

2. The Deputy Inspector General,
CISF, Southern Zone,
D Block, Rajaji Bhavan,
Besant Nagar,
Chennai 600 090.

3. The Commandant,
CISF Unit,
Neyveli Lignite Corporation,
Neyveli.

4. The Assistant Commandant,
CISF Unit, NLC,
Neyveli.

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+ 1 cc to Mr. T. N. Sugesh, Advocate SR No. 44343
+ 1 cc to Mr. M. Dhamodharan, Advocate SR No. 44604

GV(CO)
SR/10.10.2006

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